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SUBJECT: CHARGE DISCUSSES CONSTITUTIONAL ISSUES WITH TNA  
DEPUTY PRESIDENT SHAHRISTANI

Classified By: Charge d' Affaires David M. Satterfield for reasons 1.4  
(b) and (d)

11. (C/NF) Summary. TNA Deputy President Hussain al-Shahristani and Charge discussed the state of play of the constitutional debate along with the TNA's progress on key legislative proposals in a July 18 meeting. Shahristani told Charge that eighty percent of the drafting has been completed and that federalism is the only remaining big issue to be decided. Shahristani thinks the goal of having an approved text by August 15 is achievable. While all parties have agreed to some basic features of federalism, Sunni committee members are concerned that a small southern region styled after the Kurdish Regional Government will subject Iraq to undue Iranian influences and ultimately result in the dissolution of Iraq. Shahristani said natural revenues should be shared on a per capita basis, but the ownership issue is problematic as the Kurds are insisting on regional ownership. Charge repeated the USG position that ownership of natural resources should remain with the central government.

12. (C/NF) Summary Continued. Shahristani spoke highly of the TNA's progress to date. He said the new referendum law will soon be passed, along with a law addressing shortcomings in the Iraqi Special Tribunal statute and a new electoral law for the December elections. End summary.

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Constitution Debate Progressing  
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13. (C/NF) In a July 18 meeting with Charge, TNA Deputy President Shahristani said the constitutional negotiations have been intense, but the parties have achieved consensus on eighty per cent of the major issues and are progressing toward consensus on the key issue of federalism. Agreement on this issue will take time said Shahristani, but he is optimistic that one will be achieved by the August 15 deadline.

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Federalism - Sunni Concerns  
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14. (C/NF) Shahristani indicated that all parties have agreed to Kurdistan's status as a federal entity and to the central government's exclusive powers over foreign affairs, national defense, currency, and other central responsibilities. All other powers will be reserved for the provinces, said Shahristani. The Sunnis are insisting that all but Kurdistan stay unified or, if there must be change, that only one region be created from the nine southern governorates.

15. (C/NF) Sunni fear of having many regions within Iraq stems from their concern that a small southern region would be subject to undue influence from Iran, said Shahristani. "We think they need time to live as equal citizens in a democratic society," Shahristani said, "before the Sunni Arabs will be comfortable with the idea of federalism. They must understand that constitutional guarantees lead to rights, not the denial of rights to others," offered Shahristani.

16. (C/NF) Addressing the issue of a southern region, Shahristani confirmed that some deputies in the TNA want to form a region now. He went on that "Najaf (referring to Ayatollah Sistani) does not wish to see unnecessary friction created and has asked that we refrain from moving forward on such a proposal at this juncture." That said, the Assembly may consider the idea of creating a region from the nine southern governorates after the elections, but only if the Sunnis do not object, stated Shahristani. The Charge offered that this thinking is consistent with USG policy: the TNA should ensure that the right to form regions is embodied within the new constitution. However, the TNA should not take action now to create a region, as it would unnecessarily disturb current negotiations.

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Fiscal Federalism - Revenue and Resource Ownership  
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17. (C/NF) Although all parties have agreed to share revenues derived from natural resources on a per capita basis, Shahrستاني confirmed that they have not reached agreement on the issue of the ownership of natural resources. The Shia and Sunni Arabs favor national ownership of Iraq's resources while the Kurds desire ownership by region. This debate is crucial to the Sunni Arabs, stated Shahrستاني, as they must be assured that Iraq's resources will remain a national asset if they are to agree to any form of federalism. The Charge concurred, stating that the USG strongly supports national ownership of natural resources, as any other form of ownership would weaken Iraq's ability to conclude international financing agreements.

18. (C/NF) Shahrستاني added that the constitution may call for the creation of a development fund, another fund for investment, and a stabilization fund to help dampen fluctuations from future oil sales.

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Following Article 58 on Kirkuk  
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19. (C/NF) Shahrستاني said the parties have agreed to put off resolution of the Kirkuk debate until after the December elections per TAL Article 58. The issue is too complex to negotiate now and should be resolved through the legal system, Shahrستاني said. The Charge agreed and pointed to Kirkuk as a perfect example of why ownership of natural resources must be assigned to the national government. "If ownership of natural resources were to be assigned to the regions, the Kirkuk matter would never be resolved" stated the Charge.

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TNA Developing; Special Tribunal and Elections Legislation  
Moving Forward  
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10. (C/NF) Assessing the state of TNA affairs, Shahrستاني opined that the body has its shortcomings, but is learning how to be an efficient legislative body. The new referendum law is coming along well; the TNA intended to have the first reading of the election law on July 20, stated Shahrستاني. The TNA is also working on a revision of the Iraqi Special Tribunal (IST) Statute to make it impervious to legal or jurisdictional challenges.

11. (C/NF) Pressed by Charge whether the revised IST statute would bar the removal of a sitting IST judge formerly a low-level member of the Baath Party, Shahrستاني said the TNA is drafting language that will protect sitting judges from being challenged solely by reason of their former Baath Party membership. (Most IST Judges held low-level membership within the Baath Party, which was required of judges or attorneys practicing law during the former regime.)

12. (C/NF) Shahrستاني claimed that the TNA has not reached consensus on the new electoral law mainly because of Kurdish reservations. But the law will most likely call for the establishment of provincial electoral districts as opposed to the single national district used in the January elections (Baghdad would be split because of its large population). To protect minority groups (Christian, Sabeen, Yazidis), the law would establish a single national electoral district with a number of Assembly seats set aside for various minorities. The modalities for this electoral system are unclear.

13. (C/NF) Shahrستاني expressed the view that the Kurds are warming up to this idea, but asked USG assistance in pushing the matter with the Kurdish leadership. The Charge emphasized that we have informed senior Kurdish leaders that the USG supports growing national consensus on a provincial-based electoral system. Finally, Shahrستاني indicated that the TNA will request expert assistance from the UN and IECI to draft the new electoral law.

14. (U) REO HILLA, REO BASRA, REO MOSUL, and REO KIRKUK, minimize considered  
Satterfield